

Appl. No. 09/457,847
Atty. Docket No. 7114
Amdt. Dated 12/20/2004
Reply to Office Action of 09/14/04
Customer No. 27752

REMARKS

Claims 14, 15, 33-42, 45, 46, 48-50, 56, 60-64; and 65 are pending in the present application.

New Claim 65 has been added.

Claims 56, 60 and 64 has been amended.

No new matter is believed to have been added.

Additional claim fees, if any, are authorized to be charged to Applicant's account.

Rejections Under 35 USC 112, First Paragraph.

The Office Action rejects the pending claims under 35 USC section 112, first paragraph because the monomer selection in (A) is incomplete. In response, Applicant amends Claim 56 to incorporate the unintentionally omitted monomer selection to overcome the rejection.

The Office Action also rejects the claims as allegedly lacking enablement for all compositions having a pH range of from about 9 to about 10.5. In response, Applicant deletes any reference to pH thereby obviating the rejection.

Rejection Under 35 USC 102(e) Over Trinh

The Office Action rejects the pending claims under 35 USC 102(e) as being unpatentable over Trinh, presumably U.S. Pat. No. 6,001,343. Notably, the Office Action states that this rejection might be overcome by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another." While not conceding to the Office's position with respect to Trinh and merely in the interests of expediting prosecution, Applicant herein submits such a declaration under Rule 132 by TOAN TRINH. In view of this declaration, Applicant submits the rejection is overcome.

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Rejection Under 35 USC 102(b) and 103(a) Over Jellinek

The Office Action rejects all the pending claims under 35 USC sections 102(b) and 103(a) over Jellinek (U.S. Pat. No. 4,631,226) *except* claim 65. Original claim 65 is directed, in part, to a spray dispenser that provides droplets having a Sauter mean diameter of from about 10 μm to about 120 μm . While not conceding to the Office's position with respect to Jellinek and merely in the interests of expediting prosecution, Applicant has amended independent claim 56 *inter alia* incorporating the claim limitation of claim 65. Since the Office Action has found original claim 65 patentable over Jellinek, Applicant submits the now amended Claim 56 is patentable over Jellinek as well as all the depending claims.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC sections 112, 102, and 103 for the pending claims. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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